



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R08-OAR-2011-0963; FRL- 9615-6]

Approval and Promulgation of Air Quality Implementation Plans; Colorado; Procedural Rules; Conflicts of Interest

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: We are proposing to approve Section 1.11 of Colorado's procedural rules as adopted by the Air Quality Control Commission (Commission) on January 16, 1998 and submitted to EPA as a State Implementation Plan (SIP) revision on November 5, 1999. Section 1.11 specifies certain requirements regarding the composition of the Commission and disclosure by its members of potential conflicts of interest. We are also reproposing approval of a portion of Colorado's January 7, 2008 submittal to meet the "infrastructure" requirements of section 110(a)(2) of the Clean Air Act (CAA) for the 1997 8-hour ozone National Ambient Air Quality Standards (NAAQS), specifically the portion intended to address the requirements of section 110(a)(2)(E)(ii) of the CAA. We previously proposed approval, 76 FR 28707, of this portion as part of our action on the January 7, 2008 submittal. This action is being taken under section 110 of the CAA.

DATES: Comments must be received on or before [insert date 30 days after publication in the Federal Register].

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R08-OAR-2011-0963, by one of the following methods:

- <http://www.regulations.gov>. Follow the on-line instructions for submitting

comments.

- E-mail: komp.mark@epa.gov.
- Fax: (303) 312-6064 (please alert the individual listed in the **FOR FURTHER INFORMATION CONTACT** if you are faxing comments).
- Mail: Director, Air Program, Environmental Protection Agency (EPA), Region 8, Mailcode 8P-AR, 1595 Wynkoop Street, Denver, Colorado 80202-1129.
- Hand Delivery: Director, Air Program, Environmental Protection Agency (EPA), Region 8, Mailcode 8P-AR, 1595 Wynkoop Street, Denver, Colorado 80202-1129. Such deliveries are only accepted Monday through Friday, 8:00 a.m. to 4:30 p.m., excluding Federal holidays. Special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA-R08-OAR-2011-0963.

EPA's policy is that all comments received will be included in the public docket without change and may be made available online at www.regulations.gov, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through www.regulations.gov or e-mail. The www.regulations.gov web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA, without going through www.regulations.gov your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact

information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>. For additional instructions on submitting comments, go to Section I. General Information of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: All documents in the docket are listed in the www.regulations.gov index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in www.regulations.gov or in hard copy at the Air Program, Environmental Protection Agency (EPA), Region 8, 1595 Wynkoop Street, Denver, Colorado 80202-1129. EPA requests that if at all possible, you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8:00 a.m. to 4:00 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mark Komp, Air Program, Environmental Protection Agency (EPA), Region 8, Mailcode 8P-AR, 1595 Wynkoop Street, Denver, Colorado 80202-1129, (303) 312-6022, komp.mark@epa.gov.

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Definitions

For the purpose of this document, we are giving meaning to certain words or initials as follows:

(i) The words or initials Act or CAA mean or refer to the Clean Air Act, unless the context indicates otherwise.

(ii) The words EPA, we, us or our mean or refer to the United States Environmental Protection Agency.

(iii) The initials SIP mean or refer to State Implementation Plan.

(iv) The words State or Colorado mean the State of Colorado, unless the context indicates otherwise.

(v) The word Commission means the Colorado Air Quality Control Commission.

I. Purpose of this Action

EPA is proposing to fully approve Section 1.11 of Colorado's procedural rules, adopted by the State of Colorado on January 16, 1998 and submitted to EPA on November 5, 1999. The approval into Colorado's SIP of Section 1.11 will make it federally enforceable. Section 1.11 of Colorado's procedural rules mandates that the Commission have at least a majority of members that represent the public interest and do not derive a significant portion of their income from persons subject to permits or enforcement orders under Colorado's air quality regulations or the

CAA. The proposed approval will also federally mandate that Commission members disclose any potential conflicts of interest that arise during their terms of membership to the other commissioners in a public meeting of the Commission.

EPA is also reproposing approval of a portion of Colorado's January 7, 2008 submittal to meet the "infrastructure" requirements of Section 110(a)(2) of the CAA for the 1997 8-hour ozone NAAQS. On May 18, 2011, EPA proposed approval of Colorado's submittal with respect to (among other infrastructure requirements) the requirements of Section 110(a)(2)(E) for the 1997 8-hour ozone NAAQS. However, in a final action on July 22, 2011, 76 FR 43906, EPA did not complete approval of the submittal with respect to Section 110(a)(2)(E)(ii). In this action, EPA repropose, for reasons stated below, to approve the January 7, 2008 submittal with respect to the requirements of Section 110(a)(2)(E)(ii) for the 1997 ozone NAAQS.

II. Background of State's Submittals

Colorado adopted revisions to its procedural rules on January 16, 1998 and submitted part of the revised procedural rules to EPA on November 5, 1999.¹ Colorado's procedural rules govern all procedures and hearings before the Commission and certain procedures and hearings before the Air Pollution Control Division within the Colorado Department of Public Health and Environment. The role of the Commission is to adopt an air quality management program that fosters the health, welfare, convenience, and comfort of the inhabitants of the State of Colorado and implements this through its regulatory program. The Commission also hears appeals from the regulated community and the general public regarding the actions of the Air Pollution

¹ In a notice of proposed action dated January 25, 2011, EPA erroneously stated that Colorado had not submitted this portion of Colorado's procedural rules for approval into the SIP (76 FR 4268). Due to this error, EPA disapproved the deletion of a provision regarding disclosure of potential conflicts of interest from Colorado's Common Provisions. EPA will correct the erroneous disapproval in a subsequent action, if EPA finalizes the approval of section 1.11 of Colorado's procedural rules for inclusion into the SIP.

Control Division, including appeals of Division compliance orders and noncompliance penalty determinations, and challenges of Division denials of proposed permits or of permit terms and conditions, for construction permits and operating permits. The proposed revisions to the Commission's procedural rules, last revised in 1984, were intended to bring the Commission current with all applicable procedural requirements for their official actions. In particular, Section 1.11 was intended to address the requirements of section 128 of the CAA.

Separately, on January 7, 2008, Colorado provided a submittal to meet the requirements of Section 110(a)(2) of the CAA for the 1997 8-hour ozone NAAQS. Under Section 110(a)(1) of the CAA, within three years of EPA's promulgation of a new or revised standard, states are required to make a submittal, known as an "infrastructure SIP," to meet the requirements of sections 110(a)(1) and (a)(2). Section 110(a)(1) provides the procedural and timing requirements for SIP submissions after a new or revised NAAQS is promulgated. Section 110(a)(2) lists specific elements the SIP must contain or satisfy. These infrastructure elements include requirements, such as modeling, monitoring, and emissions inventories that are designed to assure attainment and maintenance of the NAAQS.

III. EPA Analysis of State's Submittals

In its November 5, 1999 submittal, Colorado stated that Section 1.11 is the only provision in the Commission's procedural rules that the State intends to be part of the SIP and was submitted to EPA for approval. Colorado intended that all other requirements found in the procedural rules in all sections except Section 1.11 are not to be acted on as part of the SIP. As noted in the statement of basis for the Commission's adoption of section 1.11, the section is intended to satisfy the requirements of section 128 of the CAA.

Section 128 of the CAA requires SIPs to contain provisions that: 1) any board or body

which approves permits or enforcement orders under the CAA have at least a majority of its members represent the public interest and not derive any significant portion of their income from persons subject to permits or enforcement orders under the CAA; and 2) any potential conflicts of interest by members of such board or body or the head of an executive agency with similar powers be adequately disclosed.

Section 1.11 of Colorado's procedural rules provides that the Commission shall have at least a majority of members who represent the public interest and who do not derive a significant portion of their income from persons subject to permits or enforcement orders under Colorado's air quality regulations or under the CAA. Section 1.11 also provides that members of the Commission shall disclose any potential conflicts of interest that arise during their terms of membership to the other Commissioners in a public meeting of the Commission. The procedural rules elsewhere require that public meetings of the Commission be recorded and that the recordings are made available to the public at cost. These provisions meet the requirements of section 128 as stated above. EPA therefore proposes to approve section 1.11 of Colorado's procedural rules for inclusion into the SIP.

On May 18, 2011, EPA proposed approval of Colorado's infrastructure SIP submittal with respect to (among other infrastructure requirements) the requirements of Section 110(a)(2)(E) for the 1997 8-hour ozone NAAQS. EPA received adverse comments on, among other things, Colorado's implementation of sections 128 and 110(a)(2)(E)(ii). As a result, in a final action on July 22, 2011, 76 FR 43906, EPA deferred action on the submittal with respect to Section 110(a)(2)(E)(ii). Section 110(a)(2)(E)(ii) requires SIPs comply with the requirements regarding state boards under Section 128 of the CAA. As discussed above, approval of Section 1.11 of the State's procedural rules will satisfy the requirements under section 128 regarding

state boards, and will therefore satisfy the requirements of Section 110(a)(2)(E)(ii), as well. EPA therefore proposes to approve Colorado's January 7, 2008 submittal with respect to the requirements of section 110(a)(2)(E)(ii), which will complete EPA's action on all portions of the State's submittal to meet infrastructure requirements for the 1997 8-Hour ozone NAAQS.

IV. Consideration of Section 110(l) of the CAA

Section 110(l) of the CAA states that a SIP revision cannot be approved if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress toward attainment of the NAAQS or any other applicable requirement of the Act. The Colorado SIP revisions that are proposed for approval in this action do not interfere with attainment of the NAAQS or any other applicable requirement of the Act. The revisions do not make substantive changes that relax the stringency of the Colorado SIP; instead, the submittal of Section 1.11 of Colorado's procedural rule meets a requirement of the CAA. Therefore, the revisions proposed for approval satisfy section 110(l) requirements.

V. Proposed Action

We are proposing for approval Section 1.11 of Colorado's procedural rule as adopted by the Commission on January 16, 1998 and submitted to EPA on November 5, 1999. We are also reproposing approval of a portion of Colorado's January 7, 2008 submittal to meet the "infrastructure" requirements of section 110(a)(2) for the 1997 8-hour ozone NAAQS, specifically the portion intended to address the requirements of section 110(a)(2)(E)(ii) of the CAA.

VI. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k);

40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this proposed action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and

- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: December 23, 2011.

James B. Martin
Regional Administrator
Region 8

6560-50-P

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